by consent appearing from the husband's signature and acknowledgment. *Elliott* v. *Sleeper,* 2 N. H. 525; *Armstrong* v. *Stovall,* 26 Miss. 275; *Pease* v. *Bridge,* 49 Conn. 58; *Dentzel* v. *Waldie,* 30 Cal. 139.

ELECTION CONTEST—TIE VOTES—EFFECT.—Plaintiff received 95 votes, defendant 101, and a contest was instituted on grounds of malconduct of Judges in miscounting votes. On recount plaintiff and defendant each received 79 votes, which was the highest number of votes received by any of the candidates. *Held,* that, where two persons are found on an election contest to have received an equal and the highest number of votes, the contest is properly dismissed. *Wright* v. *Ashton* (1904), — Cal. —, 77 Pac. Rep. 477.

This decision is based on sections 1111, subds. 1-4: 1112: 1114, Code Civ. Proc. Section 1111 provides that the election of any person may be contested because of malconduct of election officers and on account of illegal votes. Section 1112 provides that no irregularity or improper conduct in the proceedings of the Judges is such malconduct as to avoid an election unless the irregularity is such as to procure the person, whose right to the office is to be contested, to be declared elected when he has not received the highest number of votes. Plaintiff contended that the defendant did not receive the highest number of votes, but the court held that since 79 was the highest number of votes and the defendant received that number as well as the plaintiff, the irregularity was not such as to avoid the election. Section 1114 provides that nothing in section 1111 is to be so construed as to avoid an election, unless the deduction of the illegal votes will reduce the number cast for the person declared elected below the number of votes given to some other person. Clearly this is not done in this case. The decision of the court is supported by *Smith* v. *Thomas,* 121 Cal. 533. The dissenting Justice took the view that the question was one of great public importance and that no person should be retained who is found not to be elected. The right of the court to annul an election is based on section 1112, Code Civ. Proc., which provides for steps to be taken in case a court does annul an election.

INJUNCTION—SPECIAL INJURY—STREET IMPROVEMENT.—In pursuance of the authority of a resolution of the City Council, the owners of property within a certain half block set the curb four feet farther out toward the center of the street and began to widen the sidewalk. Complainant, a property owner on the same street, asked for an injunction, claiming that defendants were proceeding with the intention of forcing him and other property owners on the same street to widen their walks. *Held,* that the relief prayed for would not be granted. *Mitchell* v. *The City of Peru* (1904), — Ind. —, 71 N. E. Rep. 132.

This decision undoubtedly follows the general rule that an injunction will not be granted at the suit of a private party, to restrain acts affecting the public, unless such private party can show some special and irreparable injury to himself, distinct from that suffered by the public at large. *Pomeroy's Eq. Jur.,* Section 1349; *Town of Marion* v. *Skillman,* 127 Ind. 130. The court specifically pointed out that complainant suffered no such special damage, but that the improvement would merely cause him and other prop-

erty owners to widen the walk in front of their lots, in order to restore the good appearance of the street. That cutting down sidewalk to widen the carriageway will not be restrained, see, *Town of Marion* v. *Skillman,* supra; *Strauss* v. *The City of Dallas,* 73 Tex. 649; *Cross* v. *The Mayor of Morristown,* 18 N. J. Eq. 315. However, it has been held that an attempt to change the street in such a way as to diminish the right of way available for public use, will be restrained. *Lawrence* v. *The Mayor of New York,* 2 Barb. 577; *State* v. *The Mayor and Aldermen of Mobile,* 5 Porter (Ala.), 279, 30 Am. Dec. 564.

INSOLVENCY OF BUILDING AND LOAN ASSOCIATIONS—BORROWING SHAREHOLDER—CREDITS.—Plaintiff as receiver of an insolvent Building and Loan Association, in foreclosure proceedings against a borrowing member who has paid all dues and assessments, seeks to charge such member with the so-called earned premium. *Held,* that defendant was entitled to credit for all interest and premium paid. *Ottensoser et al.* v. *Scott* (1904), — Fla. —, 31 So. Rep. 161.

The premium referred to is part of a bonus paid by the borrowing member for the privilege of repaying the loan in installments spread over a stated number of years. Upon the insolvency of the Association before the allotted time the consideration for the bonus fails and the general rule in settling affairs of insolvent Building and Loan Associations is to allow the borrowing shareholder credit on the loan for all interest and premiums paid. A different rule was laid down by Judge Grosscup in *Towle* v. *American Building, Loan and Investment Society,* 61 Fed. Rep. 446, allowing the receiver to charge such member with the amount of premium paid up to the time of insolvency, the so-called earned premium. This rule has been followed to some extent. *Choisser* v. *Young,* 69 Ill. App. 252, but the decided weight of authority and apparently better reason is with majority opinion in the principal case. *Spinney* v. *Miller,* 114 Iowa 210; *Rogers* v. *Hargo,* 92 Tenn. 35; *Curtis* v. *Granite State Provident Association,* 69 Conn. 6; *Knutson* v. *Northwestern Loan and Building Ass'n.,* 67 Minn. 201.

INSURANCE—DELAY IN MAKING PROOFS OF DEATH WHEN BLANKS WERE TO BE FURNISHED BY INSURER.—A policy of life insurance contained the provision that notice of death should be given within thirty days and proof of death be forwarded within ninety days on blanks to be furnished by the company. The beneficiary gave due notice of the death of insured and requested that blank proofs be sent her. The defendant claimed and the evidence showed that it mailed the blanks soon after this request; but they failed to reach plaintiff. Some thirty days after this first request plaintiff made a second request for them and received them a few days later. Owing to this delay the final proofs did not reach the insurer until nine days after the expiration of the ninety day limit, and it promptly disclaimed liability on account of the proofs being too late. *Held,* that plaintiff could recover. *Robinson* v. *Northwestern National Insurance Company* (1904), — Minn —, 100 N. W. Rep. 226.

The court considered that plaintiff had used due diligence in furnishing